

## Food and Nutrition Service, USDA

## § 247.37

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(Approved by the Office of Management and Budget under control number 0584-0293)

### § 247.35 Local agency appeals of State agency actions.

(a) *What recourse must the State agency provide local agencies to appeal a decision that adversely affects their participation in CSFP?* The State agency must establish a hearing procedure to allow local agencies to appeal a decision that adversely affects their participation in CSFP—e.g., the termination of a local agency's participation in the program. The adverse action must be postponed until a decision on the appeal is made.

(b) *What must the State agency include in the hearing procedure to ensure that the local agency has a fair chance to present its case?* The hearing procedure must provide the local agency:

- (1) Adequate advance notice of the time and place of the hearing;
- (2) An opportunity to review the record before the hearing, and to present evidence at the hearing;
- (3) An opportunity to confront and cross-examine witnesses; and
- (4) An opportunity to be represented by counsel, if desired.

(c) *Who conducts the hearing and how is a decision on the appeal made?* The hearing must be conducted by an impartial person who must make a decision on the appeal that is based solely on the evidence presented at the hearing, and on program legislation and regulations. A decision must be made within 60 days from the date of the request for a hearing, and must be provided in writing to the local agency.

### § 247.36 Confidentiality of applicants or participants.

(a) *Can the State or local agency disclose information obtained from applicants or participants to other agencies or individuals?* State and local agencies must restrict the use or disclosure of information obtained from CSFP applicants or participants to persons directly connected with the administration or enforcement of the program, including persons investigating or prosecuting program violations. The State or local agency may exchange participant information with other health or

welfare programs for the purpose of preventing dual participation. In addition, with the consent of the participant, as indicated on the application form, the State or local agency may share information obtained with other health or welfare programs for use in determining eligibility for those programs, or for program outreach. However, the State agency must sign an agreement with the administering agencies for these programs to ensure that the information will be used only for the specified purposes, and that agencies receiving such information will not further share it.

(b) *Can the State or local agency disclose the identity of persons making a complaint or allegation against another individual participating in or administering the program?* The State or local agency must protect the confidentiality, and other rights, of any person making allegations or complaints against another individual participating in, or administering CSFP, except as necessary to conduct an investigation, hearing, or judicial proceeding.

### § 247.37 Civil rights requirements.

(a) *What are the civil rights requirements that apply to CSFP?* State and local agencies must comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), and titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.). State and local agencies must also comply with the Department's regulations on non-discrimination (parts 15, 15a, and 15b of this title), and with the provisions of FNS Instruction 113-2, including the collection of racial/ethnic participation data and public notification of non-discrimination policy. State and local agencies must ensure that no person shall, on the grounds of race, color, national origin, age, sex, or disability, be subjected to discrimination under the program.

(b) *How does an applicant or participant file a complaint of discrimination?*

**Pt. 248**

**7 CFR Ch. II (1–1–13 Edition)**

CSFP applicants or participants who believe they have been discriminated against should file a discrimination complaint with the USDA Director, Office of Civil Rights, Room 326W, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or telephone (202) 720–5964.

**PART 248—WIC FARMERS’ MARKET NUTRITION PROGRAM (FMNP)**

**Subpart A—General**

Sec.

248.1 General purpose and scope.

248.2 Definitions.

248.3 Administration.

**Subpart B—State Agency Eligibility**

248.4 State Plan.

248.5 Selection of new State agencies.

**Subpart C—Recipient Eligibility**

248.6 Recipient eligibility.

248.7 Nondiscrimination.

**Subpart D—Recipient Benefits**

248.8 Level of benefits and eligible foods.

248.9 Nutrition education.

**Subpart E—State Agency Provisions**

248.10 Coupon and market management.

248.11 Financial management system.

248.12 FMNP costs.

248.13 FMNP income.

248.14 Distribution of funds.

248.15 Closeout procedures.

248.16 Administrative appeal of State agency decisions.

**Subpart F—Monitoring and Review of State Agencies**

248.17 Management evaluations and reviews.

248.18 Audits.

248.19 Investigations.

**Subpart G—Miscellaneous Provisions**

248.20 Claims and penalties.

248.21 Procurement and property management.

248.22 Nonprocurement debarment/suspension, drug-free workplace, and lobbying restrictions.

248.23 Records and reports.

248.24 Other provisions.

248.25 FMNP information.

248.26 OMB control number.

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**Subpart A—General**

**§ 248.1 General purpose and scope.**

This part announces regulations under which the Secretary of Agriculture shall carry out the WIC Farmers’ Market Nutrition Program. The dual purposes of the FMNP are:

(a) To provide resources in the form of fresh, nutritious, unprepared foods (fruits and vegetables) from farmers’ markets to women, infants, and children who are nutritionally at risk and who are participating in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) or are on the waiting list for the WIC Program; and

(b) To expand the awareness, use of and sales at farmers’ markets.

This will be accomplished through payment of cash grants to approved State agencies which administer the FMNP and deliver benefits at no cost to eligible persons. The FMNP shall be supplementary to the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) and to any other Federal or State program under which foods are distributed to needy families in lieu of food stamps.

**§ 248.2 Definitions.**

For the purpose of this part and all contracts, guidelines, instructions, forms and other documents related hereto, the term:

*Administrative costs* means those direct and indirect costs, exclusive of food costs, as defined in § 248.12(b), which State agencies determine to be necessary to support FMNP operations. Administrative costs include, but are not limited to, the costs of administration, start-up, training, monitoring, auditing, the development of and accountability for coupon and market management, nutrition education, outreach, eligibility determination, and developing, printing, and distributing coupons.

*Compliance buy* means a covert, on-site investigation in which a FMNP